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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/556,801
Filing Date: November 14, 2005
Appellant(s): MCNAMARA ET AL.

David J. Gaskey
<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12 November 2008 appealing from the Office action mailed 7 August 2008.

(1) Real Party in interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,750,945	Fuller et al	10-1998
GB 2,270,292	Miyoshi et al	3-1994
2001/0025743	Ach	10-2001
6,401,871	Baranda et al	6-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites a tension member comprising a plurality of belts wherein each belt has a thickness of approximately 10 mm and a width of approximately 30 mm as well as the possibility of having multiple belts of unspecified dimensions (as derived from "In one example…", Specification, Page 4, L. 8). Furthermore, the disclosure states that the inventive belt is ".... significantly different than a rope or chain used in "conventional compensating arrangements"; however, said belt is not properly depicted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 7 - 9 and 18 - 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al (5,750,945) in view of Miyoshi et al (GB 2,270,292).

Re: Claim 1, Fuller et al disclose:

- a cab (13, Fig. 1);
- a counterweight (32);
- a load bearing member (14) extending between the cab and the counterweight so that the cab and counterweight move simultaneously;
- a tension member (16) extending between the cab and the counterweight, the tension member providing a desired tension on the load bearing member;
- a termination (36, Fig. 2), the termination including an elastic element (52) that dampens an initial tendency of the cab or the counterweight to continue moving even though the other of the cab or the counterweight has stopped; and
- a damper (56) supported for movement with one of the cab or the counterweight, one end of the tension member being associated with the damper such that the damper reduces motion of the cab or the counterweight when the other of the cab or the counterweight has stopped after a bias of the elastic element is overcome and the elastic element is at least partially compressed; however,

Fuller et al disclose their termination associated with an end of the load bearing member.

Attention is directed to Myoshi et al who teach their termination (4, Fig. 8) associated with an end of their load bearing member (3) as well as their tension member (11) to afford vibration damping of both the load bearing and tension members in anticipation of mechanically generated vibrations as known in the art (Page 2, L. 15).

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al with the teaching of Myoshi et al for driving control (Line 27).

Re: Claim 7, Fuller et al disclose wherein the damper comprises at least one of an air spring, a pneumatic damper, a hydraulic damper or a mechanical spring.

Re: Claim 8, Fuller et al disclose a first member (40, Fig. 3) acting against one side of the damper and a second member (46) associated with an opposite side of the damper, the first member remaining stationary relative to the cab or counterweight with which the damper moves, the second member being moveable relative to the first member, the damper resisting movement of the second member toward the first member.

With respect to the embodiment of Fuller et al in view of the teaching of Myoshi et al, said first and second members would be designated interchangeably, e.g., first member (46, Fig. 3) acting against one side of the damper and a second member (40) associated with an opposite side of the damper.

Re: Claim 9, Fuller et al disclose wherein their *load bearing* member is secured to at least one termination (49, Fig. 3) that is secured near one end of each of a plurality of thimble rods (note threaded portions, each secured by a nut), an opposite end of the thimble rods being positioned on an opposite side of the second member from the damper and wherein the elastic element comprises a spring associated with each opposite end of each thimble rods to urge the opposite ends away from the second member.

However, Fuller et al are silent with respect to a termination associated with their *tension member*.

Attention is directed to Myoshi et al who teach their termination (4, Fig. 8) associated with an end of their load bearing member (3) as well as their tension member (11) to afford vibration damping of both the load bearing and tension members in anticipation of mechanically generated vibrations as known in the art (Page 2, L. 15).

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al with the teaching of Myoshi et al for driving control (Line 27).

Re: Claim 18, Fuller et al disclose an assembly (Fig. 1) for providing tension on a load bearing member in an elevator system, comprising:

- an elongate tension member having a first end that is adapted to be secured to one of a cab or a counterweight;
- a termination, the termination including an elastic element that dampens an initial tendency of the cab or the counterweight to continue moving even though the other of the cab or the counterweight has stopped; and
- a damper that is adapted to be supported for movement with the other of the cab or the counterweight, a second end of the load bearing member being associated with the damper such that the damper absorbs a load on the laod bearing member under selected conditions after a bias of the elastic element is overcome and the elastic element is at least partially compressed;
- a base module (not depicted, understood to house 20, Fig. 1) that is adapted to be secured in a pit (not depicted, understood) and that includes at least one sheave (20) having an axis of rotation that remains stationary relative to the pit, the tension member at least partially wrapping around the sheave.

However, Fuller et al are silent with respect to a termination associated with their *tension member*.

Attention is directed to Myoshi et al who teach their termination (4, Fig. 8) associated with an end of their load bearing member (3) as well as their tension member (11) to afford vibration damping of both the load bearing and tension members in anticipation of mechanically generated vibrations as in part generated by their base module and as known in the art (Page 2, L. 22).

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al with the teaching of Myoshi et al for driving control (Line 27).

Re: Claim 19, Fuller et al disclose wherein the damper includes at least one of an air spring, a hydraulic actuator, a pneumatic actuator or a mechanical spring.

Claims 2, 10, and 12 - 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al in view of Miyoshi et al, as applied to Claim 1 with respect to Claim 2, and in further view of Ach (2001/0025743).

Fuller et al disclose a stationary base (not depicted, but understood, e.g. to support compensating sheave (20)) supported beneath a lowest available position of their cab; however, Fuller et al are silent with respect to a plurality of tension members and a plurality of sheaves rotatably supported on their base.

Miyoshi et al teach a stationary base (not depicted, but understood, e.g. to support compensating sheave (12)) supported beneath a lowest available position of the cab and a plurality of sheaves (12, in keeping with alternative plurality of load bearing members and dampers, Pg. 4, L. 3) rotatably supported on the base; however, Miyoshi et al disclose each tension member moving along a sheave as the cab and counterweight move.

Attention is directed to Ach who teaches his stationary base (12) supported beneath a lowest available position of his cab (1) and a plurality of sheaves (6) rotatably supported on the base, his tension member (4) moving along the sheaves as the cab and counterweight move, for the features of affording desired displacement of the tension member in accommodating the elevator arrangement (L) for parallel runs of the tension member between the stationary base and respective counterweight and elevator car, larger standardized sheaves and a tension member of larger diameter.

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al and Miyoshi et al with the teachings of Ach for utility.

Claims 3 – 6 and 15 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al, Miyoshi et al and Ach, as applied to Claim 2, and in further view of Baranda et al (6,401,871).

Re: Claim 3, Fuller et al, Miyoshi et al and Ach are silent with respect to a material of their sheaves.

Attention is directed to Baranda et al who teach their sheaves as optionally fabricated from plastic (Col. 6, L. 10), wherein the use of plastic promotes the service life of their tension member (Col. 5, L. 9), as an inexpensive alternative to the use and inevitable replacement of sheave liners.

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al, Miyoshi et al and Ach with the teachings of Baranda et al for enhanced service life and reduction in operating costs.

Re: Claims 4 - 5, Fuller et al and Miyoshi et al are silent with respect to a diameter of their sheaves with respect to that of their tension members.

Ach reviews the diameters of his sheaves as being "... of equal size whose sum is greater than the trailing rope separation..." as well as the teaching of the "... smaller the diameter of the tensioning pulley, the higher the number of revolutions per unit of distance traveled by the elevator car ... which causes disturbing noise from the bearings (not shown) providing the rotatable mounting (of his stationary base). At the same time, it is only possible to use tension members (sic) of small diameter and in large numbers; however, Ach is silent with respect to a ratio of his sheave diameter to that of his tension member(s).

Attention is directed to Baranda et al who teach standard sheaves as having diameters of 320 mm and the ability to reduce the sheave diameter and thereby the ratio of sheave diameter to outer diameter of their tension member through the use of synthetic tension members (Col. 1, L. 66 - Col. 2, L. 14), whereby the width of their tension member is much greater than its diameter for a reduction of bending pressure applied to their tension member (Col. 7, L. 18 – 23). Furthermore, Baranda et al review an example(s) of their inventive belt as having core ropes of unique material and

diameter encased in a protective, sheave-engaging coating (Col. 5, L. 30 - 39) as well as interdependency of their sheave diameter, belt diameter and space with respect to a anticipated load (Col. 5, L. 29); thereby yielding a sheave having a diameter approximately thirty times greater than that of an outside diameter of a tension member.

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al and Miyoshi et al with the teachings of Ach and Baranda et al for enhanced service life and reductions in noise and torque, for ergonomics and costs.

Re: Claim 6, Fuller et al are silent with respect to a plurality of tension members and Miyoshi et al and Ach disclose a plurality of tension members; however, Miyoshi et al and Ach are silent with respect to their respective thickness and width.

Attention is directed to Baranda et al who their tension member comprising a plurality of belts (Fig. 3) wherein each of said belts has a width much greater than its diameter, "...particularly of (sic) (aspect) (sic) ratios greater than two" (Col. 4, L. 59).

It would have been obvious to one of ordinary skill in the art to modify the reference of Fuller et al, Miyoshi et al and Ach with the teachings of Baranda et al for enhanced distribution of rope pressure and thereby service life, without comprising "load carrying capacity", for savings in operating costs.

Re: Claims 15 – 17, Fuller et al and Miyoshi et al are silent with respect to the diameters of their sheaves and Ach teaches the diameters of his sheaves being of large diameter and thereby of standard size for noise reduction; however, Ach is silent with respect to a diameter of their sheaves with respect to the diameter of their tension member.

Attention is directed to Baranda et al who teach standard sheaves as having diameters of 320 mm and the ability to reduce the sheave diameter and thereby the ratio of sheave diameter to outer diameter of their tension member through the use of synthetic tension members, whereby the width of their tension member is much greater than its diameter for a reduction of bending pressure applied to their tension member. Furthermore, Baranda et al review an example(s) of their inventive belt as having core ropes of unique material and diameter encased in a protective, sheave-engaging

coating as well as interdependency of their sheave diameter, belt diameter and space with respect to an anticipated load, thereby yielding a sheave having a diameter approximately thirty times greater than that of an outside diameter of a tension member.

Additionally, Baranda et al teaches their tension member comprising a plurality of belts wherein each of said belts has a width much greater than its diameter, "…particularly of (sic) (aspect) (sic) ratios greater than two" (Col. 4, L. 59).

It would have been obvious to one of ordinary skill in the art to modify the reference Fuller et al, Miyoshi et al and Ach with the teachings of Baranda et al for enhanced distribution of rope pressure and thereby service life, without comprising "load carrying capacity".

Claims 20 - 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi et al in view of Baranda et al.

Re: Claim 20, Miyoshi et al disclose:

- a cab (6, Fig. 8);
- a counterweight (13);
- a load bearing member (3) extending between the cab and the counterweight so that the cab and counterweight move simultaneously;
- a tension member (11) extending between the cab and the counterweight, the tension member providing a desired tension on the load bearing member, said tension member comprising a plurality of tension members; and
- a damper (5b) supported for movement with one of the cab or the counterweight, one end of the tension member being associated with the damper such that the damper reduces motion of the cab or the counterweight when the other of the cab or the counterweight has stopped; however,

Miyoshi et al are silent with respect to their tension member comprising a belt.

Attention is directed to Baranda et al who their tension member comprising a plurality of belts (Fig. 3) wherein each of said belts has a width much greater than its diameter, "…particularly of (sic) (aspect) (sic) ratios greater than two" (Col. 4, L. 59) as

well as that their belts have a thickness of *approximately* 10 mm and a width of *approximately* 30 mm (Col. 7, L. 39 – 45, based on the amount and diameters of the internal ropes), for enhanced flexibility, smaller sheave diameters generating significant reductions in torque (drive capacity) and reduction in rope pressure.

It would have been obvious to one of ordinary skill in the art to modify the reference of Miyoshi et al with the teachings of Baranda et al for savings in capital- and operating costs.

Furthermore, it would have been an obvious to one of ordinary skill in the art, as a matter of optimization and experimentation, to provide the belts having a thickness of *approximately* 10 mm and a width of *approximately* 30 mm in as much as the criticality of these dimensions has not been disclosed yet such constructions have been anticipated by the prior art of record as reviewed above.

Re: Claim 21, Miyoshi et al disclose a stationary base (not depicted, but understood, e.g. to support compensating sheave (12)) supported beneath a lowest available position of the cab and a plurality of sheaves (12, in keeping with alternative plurality of load bearing members and dampers, Pg. 4, L. 3) rotatably supported on the base, the tension member(s) moving along a sheave(s) as the cab and counterweight move.

Re: Claims 22 - 23, Miyoshi et al are silent with respect to the diameters of their sheaves.

Attention is directed to Baranda et al who teach standard sheaves as having diameters of 320 mm and the ability to reduce the sheave diameter and thereby the ratio of sheave diameter to outer diameter of their tension member through the use of synthetic tension members, whereby the width of their tension member is much greater than its diameter for a reduction of bending pressure applied to their tension member. Furthermore, Baranda et al review an example(s) of their inventive belt as having core ropes of unique material and diameter encased in a protective, sheave-engaging coating as well as interdependency of their sheave diameter, belt diameter and space

with respect to an anticipated load, thereby yielding a sheave having a diameter approximately thirty times greater than that of an outside diameter of a tension member.

Additionally, Baranda et al teaches their tension member comprising a plurality of belts wherein each of said belts has a width much greater than its diameter, "...particularly of (sic) (aspect) (sic) ratios greater than two" (Col. 4, L. 59).

It would have been obvious to one of ordinary skill in the art to modify the reference of Miyoshi et al with the teachings of Baranda et al for performance and savings in operating costs.

(10) Response to Argument

Appellant's arguments are directed to the prosecution of **Claims 1, 10 and 18**, regarding the reference of Fuller et al as modified by Miyoshi et al and **Claim 20** regarding the reference of Miyoshi et al as modified by Baranda et al, for which the appellant argues:

Re: Claims 1, 10 and 18:

- "Examiner has attributed features to the Fuller et al reference that are not there", notably that the "damper (56) supported for movement with one of the cab or the counterweight, one end of the tension member being associated with the damper such that the damper reduces motion of the cab or the counterweight when the other of the cab or the counterweight has stopped after a bias of the elastic element is overcome and the elastic element is at least partially compressed" is in fact not a damper, rather said damper of Fuller et al comprises"... active force actuators 56 that do not perform the function suggested by the Examiner";
- The Examiner "... appears to acknowledge that "the damper (56)" is not associated with an end of a "tension member (16)" of Fuller et al;
- Fuller et al disclose "... that when the brakes are applied to stop the elevator car, the hitch command signal is controlled "to thereby freeze the position of the force actuators 56..."" (Col. 7, L. 19 – 21);

- The Examiner, in referencing an excerpt of the abstract, divulges that "…said actuators comprise "… the variable extension… controlled for varying the vertical position of the elevator car *along the elevator flight path* for damping at least the high frequency components of the elevator car vertical oscillations" (emphasis added)", with which applicant argues that "…the damper 56 of Fuller et al is applicable to an elevator in motion as opposed to that which is cited in the claims, i.e. an elevator cab that has stopped";
- A lack of *prima facie* case of obviousness exists "given the express *teaching* of the Fuller et al reference, due to a "flawed interpretation of the Fuller et al reference", thereby violating MPEP 2143.01 (VI); and
- Miyoshi et al "… teach (sic) an arrangement that operates in a manner that is the direct opposite of the claimed arrangement…", notably that the "... elastic member between the counterweights is "composed of a member having an elastic coefficient ***smaller*** than those of the ropes and thimble rod spring..."

Re: Claim 20:

- "There is nothing in the Miyoshi et al or Baranda et al references that discloses or in any way suggests using a plurality of belts as the **tension member**;
- "… the sheave sizes mentioned in the Baranda et al. reference are for traction sheaves…"
- Therefore, "… there is no prima facie case of obviousness"

With respect to the first set of arguments, the reference of Fuller et al incorporates all elements as claimed, excluding their termination associated with an end of a tension member, for which the reference of Miyoshi et al is cited as teaching accordingly with respect to their termination (4) of their tension member (11); therefore, an invention of Fuller et al as modified by Miyoshi et al anticipates the claims.

Applicant is correct that Fuller et al, as reviewed in the previous office action, discloses the term "active force actuator" which comprises "...the variable extension…

controlled for varying the vertical position of the elevator car along the elevator flight path for damping at least the high frequency components of elevator car vertical oscillations".

In that Fuller et al disclose said actuator (damper) is "active" and is therefore controlled, whereas the elastic elements (52) of Fuller et al are passive "actuators" mounted in series with the "active" actuator, whereby the active actuator "... provides for fast enough attenuation such that the rope oscillations are essentially eliminated" (Col. 3, L. 20) "... to thereby provide active damping for the elevator car along its flight path" (Col. 4, L. 60) and the elastic elements of Fuller et al "... provide partial support for the elevator car so that the active elements 56 do not need to support the static load of the elevator car" (Col. 4, L. 54), in keeping with the serial placement and operation of their elastic elements vis-à-vis their damper(s)(Col. 8, L. 24 – 26), the claimed recitation that "... the damper reduces motion of the cab... when the ... counterweight has stopped after a bias of the elastic element is overcome and the elastic element is at least partially compressed" is met.

That the damper of Fuller et al can provide an algorithmically defined stroke following a braking operation to accommodate the embarkation/disembarkation of passengers (Col. 7, L. 23) does not contradict the claim language. Furthermore, that the damper of Fuller et al is "... controlled for varying the vertical position of the elevator car *along the elevator flight path* for damping *at least the high frequency* components of the elevator car vertical oscillations" does not refute the claim language either, in as much as the damper of the instant invention as well as Fuller et al address vertical oscillations along the travel (flight path) of an elevator car.

Finally, with respect to Fuller et al, Examiner concurs that "the damper (56)" is not associated with an end of a "tension member (16)" as defined by the instant invention, for which the teaching of Miyoshi et al was applied accordingly.

Therefore, applicant's assertion as to the Examiner's "flawed interpretation" of Fuller et al is not persuasive.

With respect Miyoshi et al, Applicant has argued elements *between* the counterweights of Miyoshi et al; yet the elements of interest and as referenced within the rejections above and the preceding paragraph are terminations (4) with respect to a tension member (11). Though the terminations are depicted in greater detail with respect to the counterweight (Fig. 10 – 15), their structure and operation are similar, if not identical, to those positioned on the elevator car as well, namely, that "the termination includes an elastic element (5) that dampens an initial tendency of the cab or counterweight to continue moving even though the other of the cab or the counterweight has stopped", as claimed. Additionally, Miyoshi et al teach an alternative embodiment comprising passive dampers (43, Fig. 15) placed parallel with their elastic element as alternatively disclosed by Fuller et al (Col. 8, L. 25) as well.

Therefore, Miyoshi et al teach the applicability of the apparatus of Fuller et al "... associated with an end of a tension member..."

With respect to **Claim 20** and the invention of Miyoshi et al as modified by Baranda et al, Miyoshi et al disclose a tension member (11, Page 7, L. 16)) affording "... a desired tension on a load bearing member..." as claimed. Additionally, Miyoshi et al disclose their load bearing- and tension members (3) of similar construction.

Baranda et al teach their load bearing member that can be alternatively utilized as a tension member, wherein their tension members comprise a plurality of belts of thickness and width in keeping with the instant invention, wherein their tension members afford flexibility, thereby smaller sheave diameters, and lesser rope pressure (wear) than that attributed to ropes having circular cross-sections as known in the art.

With respect to a sheave, Applicant is correct that Baranda et al addresses the sheave diameter of a traction sheave and reviews the diameter of their traction sheave in relation to an aspect ratio of their belt; however, as noted previously, the use of standard, large diameter sheaves to minimize noise is known in the art and Baranda et al teach standard sheaves of 320 mm diameter and corresponding tension members having a thickness of "approximately 10 mm and a width of approximately 30 mm", for

the reduction of rope pressure (Col. 7, L. 18 - 23). Wherein standard, large diameter sheaves minimize noise and Baranda et al teach a sheave diameter of "... about 290 mm to about 330 mm", said sheave diameter is commensurate with the teachings of the prior art, for the reduction of noise and operating costs (enhanced (rope) service life).

With respect to the rejection of **Claim 6**, under 35 U.S.C. 112, 1st paragraph, though applicant's disclosure briefly references a plurality of belts of dimensions as claimed, in view of the implied criticality of the belts to the invention, as understood, a more conclusive disclosure with respect to their structure/embodiment is required.

With respect to the depending claims, applicant has not refuted the respective teachings of secondary reference(s), but rather reiterated a lack of *prima facie* case of obviousness of the cited prior art of record with respect to the independent claim(s).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Stefan Kruer/
Examiner, Art Unit 3654
13 January 2009
Conferees:

/Marc Jimenez/

TQAS TC 3600

/P. M. C./

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Supervisory Patent Examiner, Art Unit 3654